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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 194

ROUL MATEUS,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MORRIS LAVINE,
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No. 194

ROUL MATEUS,

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vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan F. Stone, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices thereof:

Your petitioner, Roul Mateus, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit to review the judgment of that court entered on March 19, 1942, which also denied a rehearing on June 2, 1942. The judgment of the Circuit Court affirmed the judgment of the District Court.

Summary and Short Statement.

The appellant-petitioner was a police officer of the City of El Centro, California. All the other convicted defendants, who are not appellants in the case, were Japanese.

From the evidence and from the opinion of the Ninth Circuit Court of Appeals, it appears that there were rival Japanese gamblers, and that Hideichi Yamatoda, the alleged kidnap victim in the case and the other Japanese involved were either friends or rivals dating back as far as 1938. Yamatoda, the alleged victim, was once arrested and tried for murder, upon information furnished by his rivals (R. 38-43).

Yamatoda, the alleged kidnap victim, was arrested in Los Angeles County on a warrant issued by the Police Court in El Centro. El Centro, twelve miles from the border, is the county seat of Imperial County. The border between Mexico and California runs to the county, Mexico being on one side and Imperial County on the other. Calexico, U. S. A., and Mexicali, Mexico, are divided by a common street.

It was the Government's theory that after Yamatoda was released from jail he was put in the turtleback of an automobile, driven over into Mexico and ejected from the automobile. Yamatoda made a statement to Mexican immigration officials that he walked across.

The Government charged two counts in its indictment. Count One charges the crime of kidnaping, alleged to have been committed on or about December 23, 1938, in that the appellant "did on or about December 23, 1938, in the Central Division and Southern District of California, unlawfully, willfully, knowingly, and feloniously transport and cause to be transported, and aid, assist, and abet in transporting in foreign commerce from the City of Los Angeles, California, to the City of Mexicali in the Republic of Mexico, a certain person named Hideichi Yamatoda who had theretofore been unlawfully seized, conveyed, inveigled, decoyed, abducted, and carried away, and who was then and there being held by the said defendants for ransom and otherwise."

Yamatoda's trial for murder in California is reviewed on appeal in *People* v. *Kinowaki*, 39 Cal. App. (2d) 376, 103 Pac. (2d) 203.

The second count of the indictment charges that the defendants at some time prior to December 22, 1938, the exact date being unknown, and continuously thereafter, up to the date of the return of the indictment, "did unlawfully, willfully, knowingly, and feloniously conspire, combine, confederate, and agree together and among themselves, and with others to the Grand Jurors unknown, to unlawfully, willfully, knowingly, and feloniously transport and cause to be transported, and aid, assist, and abet in transporting in foreign commerce, from the City of Los Angeles, California, to the City of Mexicali in the Republic of Mexico, a certain person named Hideichi Yamatoda who had theretofore been seized, conveyed, inveigled, kidnaped, abducted and carried away by the said defendants and was then and there being held for ransom and otherwise."

The second count further charges that the defendants committed certain overt acts among which are the following, allegedly committed by the appellants in this case:

> "1. On December 23, 1938, Yuge transported Yamatoda from Indio, California, to El Centro, California.
>
> "2. On December 23, 1938, Ota shoved Yamatoda into the turtle back compartment of an automobile on the outskirts of El Centro, California.
>
> "3. On December 23, 1938, Sonoda rode in the turtle back compartment of an automobile with Yamatoda from El Centro, California, to Mexicali in the Republic of Mexico, and ordered Yamatoda to be quiet en route.
>
> "4. On December 23, 1938, Yoshido assisted others in forcing Yamatoda into the turtle back compartment as aforesaid.
>
> "5. On December 23, 1938, Mateus was in Mexicali in the Republic of Mexico to which Yamatoda had been forcibly transported."

Other overt acts are alleged to have been performed by the other defendants, all relating to the alleged conspiracy to transport Yamatoda after the kidnaping and seizure had allegedly occurred.

The jury found the petitioner guilty of kidnaping, but disagreed as to the conspiracy charge, and disagreed as to both counts with reference to Chief of Police J. Sterling Oswalt, and the indictment as to Oswalt was subsequently dismissed.

The story told by Yamatoda was highly fantastic, and petitioner contends, was grossly and inherently improbable. There was produced in evidence Exhibit 56, a statement given by Yamatoda, to the effect that early in the morning of the 24th of December he entered Mexico under the following conditions:

That while visiting in the City of Calexico (the border town between U. S. A. and Mexico) he took a street which he didn't remember; continued walking until he noticed by the names on the business establishments that he was in a place that was not the United States; he then went toward a building where there was a light—apparently with the result that he found the place was a police station. He was detained and referred to the Immigration Office (R. 369). He further stated, in answer to the question "When did you enter Mexico?" "A. I discovered that I was in Mexico when I presented myself at the local police station. I did not know that it was the police station" (R. 369).

The statement also says: "Q. Were you accompanied by any other person when you entered Mexico? A. I came alone" (R. 370).

The witness explained in the trial of the case that he gave this statement in Mexico to the Immigration Office on a promise that if he signed it he would be back in the United States within ten days or two weeks (R. 362).

The appellant Roul Mateus, petitioner herein, was supposed to have ridden in an automobile with another officer named Keating, who was at the wheel of the car from El Centro. Keating was not prosecuted and denied that he ever drove the automobile. Mateus also denied that he ever went to Mexico with Yamatoda. It is not contended that Mateus had anything to do with Yamatoda in Los Angeles or before Yamatoda got to El Centro.

The Government's entire case shows that Mateus' name did not even enter the picture until the night of December 24, 1938.

The presentation of the Government's case on the theory of a conspiracy dated back to 1937 in New York City and to subsequent events between the various Japanese dating from September, 1938 and December 24, 1938.

The only evidence to show that there had been any transportation of Yamatoda in interstate commerce was the hearsay testimony of Yamatoda that another Japanese said to him, "This is Mexico," and that he walked on a few blocks, at which time he discovered himself to be at the Mexican police station. Whether he was in Mexico, or in the United States at the border, was left to conjecture.

There was no independent evidence to show that Mateus was along or that Yamatoda ever knew Mateus or had seen him before that night in question, or that the person he saw was, in fact, Mateus.

There was no evidence to show that Mateus ever held Yamatoda for ransom or reward or otherwise, or that he had any knowledge that anyone was holding Yamatoda for ransom or reward or otherwise.

The jury convicted the Japanese Kamanosuke Yuge as to Count Two and disagreed as to Count One. Setsuzo Ota was found guilty on both counts; Kazuji Sonoda guilty on both counts; Richard Iwao Yoshida guilty on Count Two, the jury disagreeing on Count One; Tokogiro Naka-

shima, acquitted on both counts; Frank Ugawa, acquitted on both counts, court's direction; Frank Asanuma, acquitted on both counts, court's direction.

Officer Mateus, the only non-Japanese, was found guilty on Count One, and there was a disagreement on Count Two.

Louis W. Henry, dismissal as to both counts.

J. Sterling Oswalt, disagreement as to both counts.

The District Court refused to direct the verdicts regarding Mateus, and refused to strike from the evidence all the testimony relating to events which took place prior to the appellant Mateus ever having entered the picture. These portions are set up under the assignment of errors (R. 1043-1079).

The Circuit Court affirmed the decision of the District Court (R. 1088) but stayed the mandate until further orders of the Court (R. 1089).

Questions Presented.

1. Where a witness, a professional Japanese gambler, claims to have been kidnaped by rival Japanese gamblers and transported in foreign commerce from the United States into Mexico from a county which borders on the international boundary line, is the evidence substantial if he does not know where the place is where he got out of the automobile? Where the place could or could not be the United States, and where the Japanese has made a sworn statement to a Mexican Immigration official that he came across the border alone,—is such evidence sufficient to overcome the presumption of innocence which clothes all persons accused of crime?

2. Where the accused was a police officer of a city in a border county, and is not shown to have had any knowledge of any of the acts, transactions or occurrences in an alleged conspiracy, is the verdict of a jury finding the accused guilty

of the substantive offense of kidnaping inconsistent with the disagreement by the jury regarding the guilt or innocence as to the conspiracy to kidnap, especially where the facts were such that the accused could not have been guilty of kidnaping unless he was guilty of conspiracy?

3. Where an American police officer of the principal city of a border county is charged with transporting a Japanese gambler out of town, after he has been released from jail, and there is not shown to have been any demand by the officer for reward or ransom, or any knowledge on the part of the officer that there was any demand for ransom or reward, does such act, if it occurred, constitute a violation of the Lindberg Kidnaping Act which forbids seizure for "reward or ransom"?

4. Where one does not seize, kidnap and carry away a person for ransom, reward or otherwise, but to eject an undesirable person from the community, does such act constitute kidnaping, in violation of Section 408a, 47 Stats., Section 326 as amended, 48 Stats. Section 781?

5. Where hearsay evidence has been admitted which related to acts and transactions occurring outside the presence of the accused, does such hearsay evidence prejudice the accused so that he is denied a fair trial guaranteed by the Fifth Amendment to the Constitution of the United States, and does such erroneous admission of hearsay evidence require a reversal of the judgment?

Reasons Relied Upon for Allowance of the Writ.

It is believed that the writ should be granted in this case for the following reasons:

I.

The questions presented in this case are fairly novel and have never been passed upon by this Honorable Court.

They present questions of substance which should be determined.

The question as to what is substantial evidence and whether the testimony of the admitted gambler Yamatoda that someone else told him, "This is Mexico," is sufficiently substantial to establish transportation in international or foreign commerce, has not been passed upon by this Court. The quantum of proof necessary to convict on so serious a charge as kidnaping is involved in this appeal.

II.

The question of inconsistent verdicts has never been passed upon in a case where the verdict of the jury is so inconsistent with the state of facts on another count in which there was a disagreement, as to be void for repugnancy, especially where the verdict could not be true if the charge of conspiracy was not true.

III.

This Court has never passed upon the issue, in a kidnaping case, as to whether a person who is ejected from a community and not held for ransom, or reward, or otherwise, constitutes kidnaping within the meaning of the Act, which forbids kidnaping "for ransom or reward or otherwise," especially where it involves a police officer who was acting under the orders of a superior, which superior officer although tried in the case, was not convicted and whose case was dismissed.

IV.

The case also presents the issue as to whether a defendant who is tried along with other defendants who are charged with a conspiracy, and where much evidence of conspiracy is introduced, is so prejudiced by the hearsay testimony

thus presented as to be denied a fair trial guaranteed by the Fifth Amendment to the United States Constitution.

Each of these questions is of special importance in the administration of criminal law. The opinion of the Circuit Court, while graphically delineating the facts in the case, we believe incorrectly decides the issues presented, or omits to decide them, and as to the appellant Mateus, presents practically no argument whatsoever to sustain his conviction.

Prayer.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Ninth Circuit, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Ninth Circuit Court of Appeals be reviewed so that the judgment in this case may be reversed, and that petitioner be granted such other and further relief as may be proper.

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